

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LEWIS E. DAY,)
)
Petitioner,)
)
v.) No. 4:21-CV-01494-AGF
)
DENISE HACKER,)
)
)
Respondent.)

MEMORANDUM & ORDER

This matter is before the Court on Petitioner's Motion for Extension of Time to File Notice of Appeal and Request for Form. ECF No. 21. For the reasons stated below, Petitioner's motion will be granted.

The Court entered judgment on Petitioner's petition for a writ of habeas corpus on March 11, 2025. The same day, the Court denied Petitioner a certificate of appealability.¹ On April 9, 2025, Petitioner timely filed a motion for reconsideration, and the Court denied that motion on April 17, 2025. On April 28, 2025, Petitioner filed the instant motion for extension of time, in which he requests a copy of the Court's form notice of

¹ In light of this Court's denial of a certificate of appealability, Petitioner may seek a certificate from the Eighth Circuit along with his notice of appeal from the denial of his habeas petition. *See Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts* ("If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22."); Fed. R. App. P. 22(b)(1) ("If the district judge has denied the certificate [of appealability], the applicant may request a circuit judge to issue it.").

appeal and an extension of time to file a notice of appeal in light of his incarcerated status and limited access to computers and law books.

Federal Rule of Appellate Procedure 4(a)(1)(A) requires a notice of appeal to be filed no later than thirty (30) days after entry of the judgment. However, pursuant to Rule 4(a)(4)(A), certain post-dismissal motions have an effect on the time for filing a notice of appeal. In this case, as noted above, Petitioner timely filed a motion for reconsideration, which the Court construed as a motion under either Federal Rule of Civil Procedure 59 or 60. Pursuant to Federal Rule of Appellate Procedure 4(a)(4)(A)(vi), the time to file an appeal runs from the entry of the order disposing of that motion. Because the Court denied Petitioner's motion on April 17, 2025, Petitioner's notice of appeal is not due until May 19, 2025.²

Under Federal Rule of Appellate Procedure 4(a)(5)(A), this Court may extend the time to file a notice of appeal if the "party so moves no later than 30 days after the time prescribed by this Rule(a) expires" and if the "party shows excusable neglect or good cause." Fed. R. App. P. 4(a)(5)(A). "No extension under ... Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later." Fed. R. App. P. 4(a)(5)(C). The United States Court of Appeals for the Eighth Circuit has counseled that pro se appellants may be given

² Because the last day of the 30-day period is Saturday, May 17, 2025, the period continues to run until the end of the following Monday, May 19, 2025. *See* Fed. R. App. P. 26(a)(1).

“special consideration ... regarding their notices of appeal.” *Weekley v. Jones*, 927 F.2d 382, 386 (8th Cir.1991).

Upon careful consideration, the Court concludes that Petitioner’s motion for extension was timely filed under Rule 4(a)(5)(A) and that Petitioner has demonstrated good cause for additional time. Therefore, the Court will extend the time for Petitioner to file a notice of appeal to 30 days after the prescribed time for appeal, which is June 18, 2025.

Accordingly,

IT IS HEREBY ORDERED that Petitioner’s Motion for Extension of Time to File Notice of Appeal and Request for Form is **GRANTED**. ECF No. 21. Petitioner’s notice of appeal shall be due no later than **June 18, 2025**.

IT IS FURTHER ORDERED that the Clerk of Court shall forward the Court’s form notice of appeal and any related forms (such as any form motion for leave to proceed on appeal in forma pauperis) to Petitioner.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 30th day of April, 2025.